

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 49 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-

and

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME TAX

Versus

MEHTA PARIKH & CO. PVT.LTD.

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT
for Applicant No. 1
MR R.K.PATEL FOR MR KC PATEL for
Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 Under the provisions of section 256(1) of the

Income-tax Act, 1961 (hereinafter referred to as 'the Act'), the following questions have been referred to this Court at the instance of the assessee :

- "(1) Whether the assessee is entitled to claim weighted deduction u/s. 35B of the Act in respect of the repairs (Rs.1650) as well as depreciation (Rs.5783) on equipment used for export documentation?"
- (2) Whether provisions of sec.40A(8) are attracted in respect of interest paid on the current accounts of the directors and shareholders ?
- (3) Whether the assessee is entitled to claim relief u/s. 80M after the deduction u/s. 80K of the I.T.Act ?
- (4) Whether the disallowable u/s. 40(c) is to be worked out without considering commission paid to the directors?
- (5) Whether the assessee is entitled to claim weighted deduction u/s. 35B of the Act on (i) Bank Charges on export documents Rs.9,399 (ii) freight and octroi charges for export goods received Baroda & Ahmedabad Rs.16,446 (iii) incidental expenses for export of goods paid to Mukadam Rs.4,006 (iv) packing charges etc. for exports Rs.12,518 (v) depreciation on typewriters and office equipments used for export work Rs.2673 and (vi) miscellaneous expenses for certifying documents etc.Rs.839/-?"

2. Mr. R.K.Patel, learned Advocate has appeared for the assessee and has submitted that under the instructions of the assessee, he would not like to press for the above referred questions. In the circumstances, we decline to answer the said questions and the present Reference so far as the above referred questions are concerned, is disposed of as unanswered with no order as to costs.

3. At the instance of the Revenue the following question has been referred to this Court for its opinion:

"Whether in law and on facts the assessee is

entitled to a weighted deduction u/s.35B of the I.T.Act,1961 in respect of interest on export packing credit of Rs.50,892 for the Assessment Year in question ?"

4. It has been fairly stated by the learned Advocates appearing for the respective parties that the question referred to hereinabove has already been answered by this Court in the case of Testeels Ltd. Vs. Commissioner of Income-Tax reported in 205 I.T.R.230. The said question had been answered in the affirmative i.e. against the assessee and in favour of the revenue in the said case. Looking to the facts of the case and the judgement referred to hereinabove, we answer the question in the affirmative i.e. against the assessee and in favour of the revenue. The Reference stands disposed of accordingly with no order as to costs.

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt